

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

ADVANCE AUTO BODY LLC,
SHAWN BIERD and KATRINA BIERD,

Defendants.

11-cv-341-wmc

The court held a hearing today on the United States' motions for contempt and for default judgment. Defendants Shawn Bierd and Katrina Bierd were both present. Katrina Bierd sat for a deposition earlier today, and the United States represents that she has met her obligations under the court's previously-issued order of preliminary injunction and motion to compel discovery.

During the hearing, Shawn Bierd was questioned under oath. Mr. Bierd testified that Advance Auto Body, LLC was dissolved by the State of Wisconsin in approximately 2005, but that he has continued to do business as Advance Auto Body since that time. Bierd also testified that a Mr. Fritz Weber continues to do work as an "independent contractor" at Advance Auto Body, using his tools and under his supervision for approximately 20 – 30 hours per week and that he is paid a percentage of each job, usually weekly by check, but that he does not record these payments to avoid getting Weber in trouble. Mr. Bierd further admitted retaining a number of others over the years on a similar basis, as well as his son essentially full-time.

Despite this, Bierd has not reported his gross income or that of his company, nor withheld or deposited FICA or FUTA taxes or filed Forms 940, 941 or 1099 with respect to any payments made to these so-called independent contractors. Finally, Bierd admitted taking no steps to bring himself into compliance with the court's November 7, 2011 Order of Preliminary Injunction.

Following that examination, the court found Shawn Bierd in default and civil contempt and issued the orders described below.

ORDER

IT IS ORDERED that:

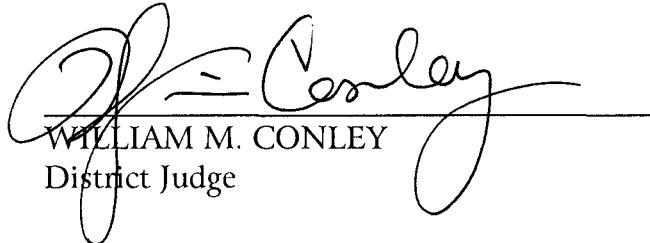
1. Defendant Shawn Bierd is in civil contempt of the court's preliminary injunction order (dkt. #20) and order compelling discovery (dkt. #29).
2. On or before September 6, 2012, Shawn Bierd must comply with the terms of both orders.
3. The records at Shawn Bierd's business, Advance Auto Body, shall be made available and open for inspection by plaintiff's representative(s) between 8:00 a.m. and 6:00 p.m. during regular business days until compliance is accomplished.
4. On or before September 7, 2012, the United States shall provide this court in writing with an update on the status of Bierd's compliance with this order, the court's preliminary injunction, and the order compelling discovery.
5. Failure to bring himself into significant compliance with these orders will result in Shawn Bierd's incarceration pending compliance.
6. Consistent with the court's earlier finding of default, Shawn Bierd, individually and d/b/a Advance Auto Body and Advance Auto Body, LLC, are permanently enjoined from:
 - a. failing to withhold FICA and income taxes, as well as the employer's share of FICA taxes of Advance Auto Body in an appropriate federal depository bank in accordance with federal deposit regulations;

- b. failing to deposit Advance Auto Body FUTA taxes in an appropriate federal depository bank in accordance with federal deposit regulations;
- c. failing to timely file all federal employment and unemployment returns (including Forms 940 and 941) with the IRS;
- d. failing to timely pay all required outstanding liabilities due with each tax return at the time the return is filed; and
- e. making any disbursement or assigning any property from the date of payment of any wages until the amounts which are required to be withheld from the payment of those wages and the employer's share of FICA taxes related to those wages are paid to the IRS.

7. Bierd's admitted failure to file individual federal income tax returns throughout this period is referred to the U.S. Attorney's Office for possible prosecution.

Entered this 30th day of August, 2012.

BY THE COURT:



WILLIAM M. CONLEY
District Judge